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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,293	08/02/2001	Rudolf Ehrmaier	951/50202	3899

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EXAMINER

BURCH, MELODY M

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 02/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/920,293

Applicant(s)

EHRMAIER ET AL.

Examiner

Melody M. Burch

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 23 December 2003.

2a) ☐ This action is **FINAL**.

2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1,2,5,6,8 and 9 is/are rejected.

7) ☒ Claim(s) 3,4,7 and 10 is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 01 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) ☐ Interview Summary (PTO-413) Paper No(s). _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other:

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/23/03 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4561527 to Nakamoto et al. in view of admitted prior art disclosed in paragraph [0005] on pg. 2 of the instant application.

Re: claims 1 and 8. Nakamoto et al. disclose a system comprising: a motor Vehicle, an automatically activated parking brake system 4 for the motor vehicle including: an electronic control unit 25 for automatically activating a parking brake in dependence on at least one specified operating parameter (angle of inclination as disclosed in col. 8 lines 5-21) of the motor vehicle, and means for arbitrarily preventing the electronic control unit from automatically activating the parking brake when the

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activation would otherwise occur based on the at least one specified operating parameter as disclosed in col. 6 lines 34-41, the means being operatively coupled with the electronic control unit as shown in figure 2A.

Nakamoto et al. lack the limitation of the motor vehicle specifically being startable without a mechanical key.

The admitted prior art disclosed in paragraph [0005] on pg. 2 of the instant application teaches that the use of a motor vehicle startable without a mechanical key is old and well known in the art. Particularly, in lines 2-4 of paragraph [0005] Applicant teaches that an electronic authorization verification device may be a functional equivalent of a mechanical key.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the motor vehicle of Nakamoto et al. to have included a vehicle that is startable without a mechanical key, as taught by the admitted prior art, in order to provide a possible means of reducing vehicle theft with through the use of a replacement vehicle start-up means that cannot be as easily and readily reproduced.

Re: claims 2 and 9. Nakamoto et al., as modified, show in figure 2A wherein the means for arbitrarily preventing the automatic activation of the parking brake comprises a key button in the form of an OFF switch 15,15a coupled with the electronic control unit, the key button being directly manually actuatable via the driver to arbitrarily prevent the automatic activation of the parking brake by the electronic control unit (while being on a particular angle of inclination).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamoto et al. in view of admitted prior art as applied to claims 1 and 2 above, and further in view of WIPO 00/37836.

Nakamoto et al., as modified, describe the invention substantially as set forth above, but do not include the limitation of the at least one operating parameter being a shutting off of an internal combustion engine of a motor vehicle.

WIPO 00/37836 teaches in lines 13-14 of the abstract the use of automatically activating the parking brakes when an internal combustion engine is turned off. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the at least one specified operating parameter of Nakamoto et al., as modified, to have included the shutting off of an internal combustion engine, as taught by WIPO 00/37836, in order to provide an alternate means of automatically applying the brakes under emergency conditions and/or as an alternate means of safeguarding against operator forgetfulness.

Allowable Subject Matter

6. Claims 3, 4, 7, and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the

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limitations of the base claim and any intervening claims. Although DE-19801064 teaches the use of an electronic authorization verification device having a wireless code transmission, DE-19801064 does not suggest or teach the use of the device in such a capacity that the insertion of the device into a holding shaft arbitrarily prevents the automatic activation of a parking brake.

Response to Arguments

7. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection. Nakamoto et al., as modified, teach the limitation of the motor vehicle startable without a mechanical key.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 703-306-4618. The examiner can normally be reached on Monday-Friday (7:30 AM-4:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on 703-308-3421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

mmb
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January 30, 2004

Melody M. Burch
1/30/04